

June 26, 2007

Edwin C. Haskell, III, Esquire  
Spartanburg County Attorney  
218 East Henry Street  
Spartanburg, South Carolina 29306

Dear Mr. Haskell:

We received your opinion request inquiring as to “whether an increase in the millage rate imposed for fire service areas set forth in the Spartanburg County Annual Budget Ordinance is limited by the provisions of section 6-1-320, Code of Laws of Sought Carolina, 1976 as amended.” With your request, you provided us with the following information:

The annual Spartanburg County budget ordinance contains a levy of an ad valorem tax to fund its “general fund” which is used to pay for certain corporate purposes of Spartanburg County. A specified millage rate is stated in the ordinance to be levied in order to generate this general fund budget amount. With certain exceptions involving reductions of levies in municipalities, this millage rate is levied on all of the taxable property in Spartanburg County.

The budget ordinance also has, in addition to the general operating fund, separately stated budget amounts and millage rates for certain fire service areas created by the county pursuant to § 4-19-10, et seq., Code of Laws of South Carolina, 1976, as amended. The ad valorem tax for the fire service areas is levied on all taxable property within the legal boundaries of the individual fire service areas. Consequently, this is not a county wide tax.

#### **Law/Analysis**

The Legislature recently amended section 6-1-320(A) of the South Carolina Code. As amended, this provision states as follows:

(A) Notwithstanding Section 12-37-251(E), a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.

2007 S.C. Act. No. 57 (emphasis added). Subsection (B) of this provision provides five specific exceptions to this general rule that local governing bodies are prohibited from increasing their millage rates above those factoring in inflation and population growth. Section 6-1-300(3) of the South Carolina Code (2004) defines a local governing body as including "the governing body of a county, municipality, or special purpose district." Thus, section 6-1-320 limits the property tax millage rates imposed by Spartanburg County (the "County"), unless one of the five exceptions is applicable.

You mentioned in your letter that the fire service areas in question were created pursuant to section 4-19-10 et seq. of the South Carolina Code (1986 & Supp. 2006). These provisions allow counties to establish a system of fire protection services. Pursuant to these provisions, a county must enact an ordinance establishing the district. S.C. Code Ann. 4-19-20(4) (Supp. 2006). In order to finance the district, the county may authorize, via the ordinance, for the levy of an additional ad valorem tax on all taxable property within the fire protection district. Id.

We presume the County provided for the collection of ad valorem taxes in its ordinance establishing the fire district in question. Thus, we gather you question whether the ad valorem taxes levied by the County for fire protection services are considered taxes "imposed for general operating purposes" as stated in section 6-1-320 of the South Carolina Code. Neither section 6-1-320 nor any other provision contained in chapter 1 of title 6 of the South Carolina Code, define "general operating purposes." Thus, we must look to the principles of statutory interpretation to determine whether providing fire protection services qualifies as a general operating purpose under section 6-1-320. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the

legislature. When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007). Moreover, "[s]tatutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000).

From a plain reading of section 6-1-320, we cannot determine whether the general operating purposes referred to in this provision include providing fire protection services as described in chapter 19 of title 4. However, in reading the provisions contained in chapter 19 of title 4 in concert with section 4-9-30 of the South Carolina Code (Supp. 2006), we believe fire protection services constitute a general operating purpose. By section 4-9-30, the Legislature establishes the general powers and authority afforded to county governments. Among these is the power

to assess property and levy ad valorem property taxes and uniform service charges, . . . and make appropriations for functions and operations of the county, including, but not limited to, appropriations for general public works, including roads, drainage, street lighting, and other public works; water treatment and distribution; sewage collection and treatment; courts and criminal justice administration; correctional institutions; public health; social services; transportation; planning; economic development; recreation; public safety, including police and fire protection, disaster preparedness, regulatory code enforcement; hospital and medical care; sanitation, including solid waste collection and disposal; elections; libraries; and to provide for the regulation and enforcement of the above.

S.C. Code Ann. § 4-9-30(5)(a) (emphasis added).

Section 4-9-30(5)(a) includes fire protection as a function and operation of a county and includes it among other activities generally considered functions and operations performed by county governments. The statutes contained in chapter 19 of title 4 specifically authorize governing bodies to create, operate, and maintain systems of fire protection, and also provide authority for a county to levy ad valorem taxes in order to accomplish these functions. However, based on section 4-9-30(5)(a), we are of the opinion that providing fire protection services is a general operating purpose. Thus, any increase in the millage rate levied by a county for the purpose of providing fire protection services, whether or not provided pursuant to chapter 19 of title 4, is limited by section 6-1-320(A), unless the increase is due to one of the exemptions provided under section 6-1-320(B).

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### **Conclusion**

Based on the above analysis, it is our opinion that an increase in the millage rate imposed for fire protection services provided the County pursuant to chapter 19 of title 4 is limited by the provisions of section 6-1-320 of the South Carolina Code.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General